COMPULSORY ARBITRATION.

A HALF-WAY HOUSE TO SOCIALISM?

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THE once familiar view that the public has no right to intervene in a quarrel between capital and labor, and that the only duty of the state is to keep a clear ring so that the combatants may settle the business without external interference, now probably commands few adherents. Several conditions, usually present in a grave industrial conflict, strike or lockout, clearly implicate the public as a third party not indifferent to the encounter. In the first place, such a conflict, commonly attended by violent local disorder and peril to life and property, imposes upon the public the right and the duty to abate a public nuisance, and to make provision against dangerous breaches of the public peace. The admitted claim of either of the two contending parties to the protection of the public force during the course of the conflict, involves some corresponding control of the public over the conduct of an industry calculated to bring about such breaches of the peace. Again, since the close organic relations between various trades scattered over the whole field of industry enable the capital and labor of any important single industry, by a sudden suspension of activity or by any other violent change, in the determination of which the related industries have no voice, to inflict heavy damage upon these innocent industries, the latter are entitled to call upon the public to protect them. This is the social or public aspect of so-called "private" industry, from the standpoint of the producer.

Last, not least, the public, in its capacity of consumer, realizing

its complete dependence for the physical necessaries and conveniences of the common life upon the peaceful, regular and efficient conduct of these private industries, insists that this public interest carries with it certain rights of government. This doctrine does not involve any revolutionary interference with or diminution of rights of individual or corporate property; it simply asserts the existence of certain restrictions upon the abuse of property, in cases where a clear public interest in the proper use has in fact grown up.

In a pamphlet discussing the legal aspects of the Coal Problem, Mr. H. W. Chaplin, of the Massachusetts Bar, quotes principles and adjudged cases from the English and American courts, already establishing the validity of these legal rights of the public which arise out of interests grown up from the habit of dependence upon the continuance and usual conduct of a private business. The broad doctrine of the public right in private property is thus summarized in a judgment delivered by Chief-Justice Waite of the Supreme Court of the United States:

"Property does become clothed with a public interest when used in a manner to make it of public consequence, and to affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control."

Statute law has embodied this principle of public control over private business where the public has acquired such interest, not only in the familiar cases of carriers and inn-keepers, but in many modern instances.

Since these several public interests thus carry rights of compulsion over private businesses which disregard the public welfare, that compulsion may be exercised in various ways; by public assumption and administration, by continuous public supervision and control in matters directly affecting the public interest, or by occasional interference such as is involved in compulsory arbitration.

The right of the public to compel capitalists and laborers to arbitrate such quarrels as involve injury to the public welfare is the least radical, the least "socialistic," of these three methods.

Not only in the United States, but in the more advanced industrial nations of Europe, public opinion is setting more strongly in this direction every year. Now that combination is everywhere displacing competition alike in capital and in labor, the old *laissez faire* individualism is perforce abandoned, and state compulsory arbitration is accepted as the most practicable compromise with the spirit of socialism. The objections of economic and political theorists are not likely to prove formidable obstacles to its adoption. But two questions still demand consideration. Is it really practicable? Can we really graft a sprig of socialism on to the old competitive system, so that it will live?

The difference between voluntary and compulsory arbitration is in truth a vital one. The former is at root a matter of individual intelligence and good-will; it presents no substantial economic difficulty. But the forcible intervention of a public authority in a quarrel between operators and operatives as to the price at which the latter shall sell their labor-power, or as to any other conditions of the industry which affect the cost or production of commodities, appears, in theory at any rate, to entail quite revolutionary consequences. "If the state," it may be urged, "is empowered to settle the price which the operators shall pay for labor power, and in other ways to determine the cost of producing the commodities they supply, it may so damage the 'freedom' of industry and so impair the profits of capital as to crush the industry." "If it is the business of the state to secure a 'living wage' for labor, it must also guarantee a living profit for capital." This sounds only fair. But if the state may thus fix the whole cost of production, it does in fact dictate selling prices; and if it does this for one trade, it must soon be called upon to do it for other trades, for the selling prices of one trade will vitally affect the health of other trades. So we shall soon be brought to a condition in which the state will be fixing wages, interest and prices all over the field of industry. It will then be found that state-fixture of prices is invalidated in one of two ways: either it is met by generally adopted methods of evasion, or, if rigidly enforced, it inhibits altogether the adaptation of supply to demand in the market. If compulsory arbitration virtually fixes the selling price for cotton or coal, it either fixes that price above the "free competitive" prices or below. If it fixes the price above, it secures a "living wage" and profit for the

worst placed or worst equipped mill or mine at the cost of an unearned surplus which goes as profit or as wage to the more efficient mills and mines; if it fixes the price below, it exterminates the worst placed or worst equipped establishments and secures a monopoly of trade for the survivors.

The logic of these objections may sound invincible, but the advocates of compulsory arbitration tell us that industry is not run by logic; "the half-way house to socialism," they aver, is proved by experience to be tenable.

The evidence upon which they rely is drawn from recent experiments in New Zealand. During the early nineties, that colony was shaken by labor disturbances which brought it to the verge of civil war; the great maritime strike of 1890 was followed by threats of industrial conflict in the railroads and in several leading manufactories. Stimulated by the extremity of the danger, Mr. Reeves, the newly appointed minister of labor, set himself to study the various schemes of conciliation and arbitration operative in England, on the Continent of Europe and in the United States. The general result of his study was a conviction of the inadequacy of voluntary arbitration; it could settle small strikes, it could not settle large ones. The strongest corroboration of this view was furnished by the recent experience of New South Wales, when the passing of a Voluntary Arbitration Act was followed, almost at once, by the three most disastrous strikes which that colony had ever experienced, the Coal Miners' Strike, the Broken Hill Strike, and the Shearers' Strike. As the result of his investigations, Mr. Reeves drafted a law which, after three rejections by the upper house of legislature, was placed upon the Statute Book in 1894, and has remained in operation since that date. This law has in point of fact substituted the atmosphere and the judgment of a civil tribunal for the appeal to force involved in the strike and the lockout. The New Zealand Compulsory Arbitration Act divides the country into industrial districts. In each district, a Board of Conciliation is provided, consisting of from four to six members duly elected by the associations of employers and of employees, with a chairman elected from outside. These boards of conciliation have full power of inquiring into any industrial issue brought before them; they can visit any premises, compel the attendance of witnesses and the production of documents. They act as Courts of First Instance in investigation and

mediation. They can make awards, but they are not empowered to enforce these awards; and in all important cases the successful party before the Board is obliged to have recourse to the Court of Arbitration. The following summary of the powers of this Court is given by Mr. H. D. Lloyd in his book, "A Country without Strikes."

"The Court of Arbitration is a court with ordinary and extraordinary powers. It can summon any party to a dispute which is before it to appear, and, if he refuses, it can proceed without him. It can enter and investigate any premises and question any persons there without warrant. It can permit any party who might appear to have a common interest in the matter to be joined in the proceedings. It can receive such evidence as it thinks fit, 'whether strictly legal evidence or not.' It has the power of other magistrates to take evidence at a distance. None of its awards can be set aside for any informality; it is required that they be not framed in a technical manner. They cannot be 'challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatsoever.' The Court is directed to make its decision 'in such manner as they find to stand with equity and good conscience.' The Court consists of three persons appointed by the Governor-general for a period of three years, one of them chosen from nominees of the employers, one from nominees of the workmen, and the third a judge of the Supreme Court. The real determination of an issue is thus vested in a judge supported by two assessors versed in the technicalities of the issues at stake. In cases of special complexity, two other experts may be chosen by the parties to act as additional members of the court, and this course is frequently adopted.

The Court and the Board have no power to intervene in a dispute of their own making; but if either of the disputants wishes to arbitrate instead of fighting, the other is not permitted to refuse this peaceful settlement. As soon as either party with a grievance likely to cause trouble appeals to the Court or the Board, it becomes a punishable offence for the workmen to stop work or for the employers to lock them out. Work must continue until the final award is given. The law even goes further, and forbids a strike or a lockout caused through either party seeking to avoid in advance an appeal to the Court.

The first object and result of Compulsory Arbitration, then, is to prevent the friction, waste and public disorder of stoppages of industry.

The successful operation of the legal process requires that the two parties shall be substantial and responsible bodies. It is, therefore, confined to trades in which trade unions and employers' unions exist. Every facility is accorded for the formation of such unions, for any seven workers in a trade may form a union, while two employers may constitute a union on the side of capital. Trade unions as well as employers' associations are incorporated and registered; they can sue and be sued, can recover subscriptions by process of law and can buy or lease land. One distinction, however, is drawn. "Employers can summon their workmen only as members of a trade union, but the men can call on individual employers as well as associations of employers; otherwise, these could defeat the Act by refusing to organize into associations." The action of a union involves not merely the members of that union but outside workmen in the award, the main object of the procedure being to establish, alike in the case of employers and employed, a common rule throughout the trade. Thus, even if the main body of the workmen of a trade were opposed to arbitration, and sought to evade the operation of the law by refusing to organize, their object could be defeated by any seven members in their trade, who, by forming a union on their own account, could bring the entire trade within the provisions of the law. Thus, on the initiative of a minority of either side, the substitution of law for force in a quarrel is made compulsory; the court has compulsory powers to secure all requisite evidence, and, finally, can compel by process of heavy and repeated fines the adoption of its award.

Mr. Lloyd claims complete success for the operation of the Compulsory Arbitration Law, and his claim is endorsed by the able French economist, M. Métin, sent over to make a study of the new legislation in Australasia, who gives a most favorable account of the results in his "*Socialisme sans Doctrines.*"

The Premier of New Zealand, addressing a meeting of British mine owners, presented the case in language which has a peculiar interest for America at the present juncture.

"With us a strike of the miners is impossible, as it is also impossible for the owner of the mine to shut down. That is a condition of

things which does not prevail anywhere else. There is a safe-guard for you. The result has been this, that even the employers, who were the first to object to the legislation, are to-day the strongest in favor of it, because, when they have strikes of any kind where there is a large amount of capital involved, the effect of that capital being laid up for weeks and exactions being demanded which that capital could not bear, would be as disastrous as it would be to our mining. The law, as it now stands, has prevented disputes, which, if there had been an industrial struggle, must have meant a loss of about a million of money to us as a small community, whereas the whole cost of the proceedings, and the whole thing summed up, would not amount to £1,000."

Finally, I may put in evidence the quite recent judgment of one of the ablest and most experienced English labor leaders, Mr. Tom Mann, who has made a close investigation of the working of the Act upon the spot. "I do not think any serious dissatisfaction exists, either on the side of employers or workers, in more than half a dozen cases in the whole colony, and seeing that up to June of last year 310 cases had been dealt with under the Act, this proportion is very small." Mr. Mann's general conclusion that "there are fewer stoppages of work in this colony than in any other country arising from industrial disputes," deserves to be put upon record.

Are there any circumstances in New Zealand specially favorable to the experiment which require us to be cautious in accepting it as conclusive proof of the universal efficacy of compulsory arbitration as a panacea for industrial strife? It is admitted that two favorable conditions are present. In the first place, the period during which the Act has been operative has been one of unusual industrial prosperity, which, even without the Act, might have brought high wages, good profits and general contentment. In most cases, the workmen have got from the Court an award of higher wages and shorter hours, which, it is argued, they might have got without the Court, by ordinary process of individual or collective bargaining. It is the lean years that will test the workmen's confidence in the Act, and those years, some suggest, are now beginning. Critics point also to South Australia, where a similar act, more recently put on the Statute Book, has hitherto remained almost a dead letter. It is certainly reasonable to expect that, when the judgments of the Court demand a wide and general reduction of wages, the ignorant majority of the workers are likely to kick against the compulsion and possibly to use their

political power to secure its repeal. The experience of voluntary schemes of profit-sharing favors this view; in bad years, when there are no profits to furnish bonuses on wages, these schemes for harmonizing capital and labor go over like ninepins.

Again, New Zealand is a very small state, with a population not more than half that of Philadelphia; it contains no great modern manufacturing industries, with their complex conditions and their overlapping and discordant interests. Where small numbers of employers and well-demarcated trades exist, such a law will be far easier of administration than in great industrial countries, such as the United States or Great Britain. It is clear that the structure and technical conditions of industry in these latter countries will render such an act much more difficult to work.

Again, the success of every new law depends absolutely upon the confidence reposed in its justice and efficiency by those whom it primarily affects. In the United States as in Great Britain, the "individualism" alike of employers and workers, though less rigorous than formerly, is still strong enough to prove a formidable obstacle to the success of compulsory arbitration. The grave difficulties in adopting and administering such a law as the Inter-State Commerce Act are at least as much economic as political; and in England both individual employers and associations of employers still look askance at the very moderate powers of conciliation vested in the Board of Trade. Nor can it be said that the laboring classes, in their capacity of producers, are generally inclined towards state compulsion as a mode of settling their quarrels with employers. More than one of the most experienced labor leaders in America assure me that the workmen as a whole would be dead against the policy, partly because it would hamper the liberty to work out their own industrial salvation, partly from their distrust of judges and courts, who they think would be biased, and when necessary bought, by the capitalist interests. British working-class sentiment is not, I think, so strongly set against compulsory arbitration: at the well-attended Trades Unions Congress this fall, a large minority voted in favor of the principle. But the majority which rejected it represented in the main the older, stronger and abler unions; and though the flavor of State Socialism which inheres in the principle attracts many of the "new" and more advanced unions, the backbone of trade unionism in the country stiffens itself against the measure.

Distrust of "class" judges, connected by birth, interest and sympathy with the employing order, is the argument most in vogue among opponents of the scheme. This is, perhaps, stronger in England than in America, where the popular vote has an influence, direct or indirect, on the election of judges. The stronger sense of a "*klassen-kampf*" which prevails in England, and the deeper social cleavage between the "classes" and the "masses," lend great weight to this argument. It is not possible to rely upon getting a just administration of laws affecting the relations of employers and employed in England; for, though there is little or no direct corruption of magistrates, the class bias is ever present and commonly prevails. In America, however, the larger popular control in the election of judges may, as a guarantee of justice and efficiency, be largely if not entirely offset by the domination of the machine and the spoils system in politics. It is commonly averred that workmen in Pennsylvania would have, and ought to have, no confidence in their ability to get justice before the District Courts of Common Pleas, in cases where the interests of great corporations were at stake. The trade-unionist attitude, in England, however, cannot be understood without taking into account the fact that compulsory arbitration implies the definite incorporation of trade unions as legal companies liable to be sued for the action of all persons who can be represented as their agents. The legal status since 1872 of a trade union has, until just recently, been held to relieve it from this liability to be sued in civil courts, and though the recent Taff Vale judgment has in a measure broken down this immunity, the more substantial trade unions are still reluctant to expose their funds to litigation, such as would be likely to occur if a formal incorporation under the Companies Act were forced upon them. If, as seems likely, despite their reluctance, their present anomalous status is removed, and incorporation made compulsory, a powerful objection against State Arbitration will be removed; and a strong movement in favor of this measure will probably spread among the British working classes, who are beginning to realize their impotence in fighting, with their small financial reserves, against the indefinitely large reserves of powerful Federations of Employers.

But, though it seems possible that in Great Britain, if not in America, a genuine impetus in favor of compulsory arbitration

as a means of saving the waste of war, may come from the side of the producers, it is far more probable that it will arise from the revolt of the "public" in its capacity of "consumer."

Just in proportion as combinations of capital so develop as to obtain effective control of certain fundamental industries engaged in supplying necessaries of life to the consuming public, their chronic power to tax this public by raising prices will be a continual irritant; this irritation will be fanned into exasperation by the spasmodic resistance of the employees of the "combination" to oppression, or else by an attempt on the part of the employees to coerce the combination into letting them "go halves" in milking the public cow, a policy which will periodically lead to strikes or lockouts. As "concentration of capital" fastens itself more firmly upon a larger number of the great routine industries, these crises will be likely to be more frequent. Each, when it occurs, will be a sharp lesson in the essentially "social" character of private industries, and no theoretic objections to socialism will, in the long run, keep the consuming public from insisting that its security and convenience shall be safeguarded by whatever remedies are needed to protect it against stoppages of industries due to faction fights of rival producing interests.

The consumers are, by reason of the individualistic nature of "consumption," unorganized, but they need not remain so; for they are also citizens, and, however slow-witted, they cannot fail to learn how to use the franchise and the machinery of state which belong to them, in the defence of their vital economic interests.

Whether this will lead to the general adoption of state control in fixing minimum rates of wages, maximum working days and other elements of a "common rule" for the several industries, and even force on a public regulation of prices for commodities, in extension of the policy of fixing railroad rates and cab fares, it is needless to discuss. The logic of "the thin end of the wedge," though it may deter during the preliminary stages of reflection, never finally prevents the adoption of an obvious method of escape from an intolerable predicament. Nor will any speculation as to possible future perils be likely to prevent the consumer-citizens of modern industrial states from seeking the experimental shelter of this half-way house to socialism.

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